

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





74 - 2166

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PLS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

HOWARD M. WERNER,

Plaintiff - Appellant

against

UNITED STATES OF AMERICA

Defendant - Appellee

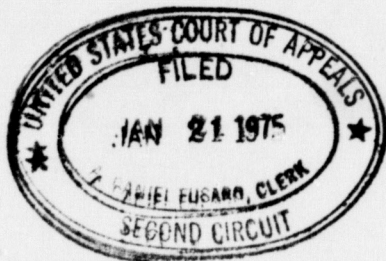
Plaintiff on Cross-  
Complaint

Case No.

74 - 2166

Brief of Plaintiff - Appellant

On Appeal from the United States District Court  
for the District of Connecticut



JOSEPH NEIMAN, ESQ.,  
103 Market Square,  
Newington, Conn., 06111  
Of Counsel

To be Argued by

LOUIS NOAH FORMAN, Esq.,  
1540 Broadway,  
New York, N. Y., 10036

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### Preliminary Statement

Howard M. Werner appeals from a judgment of the United States District Court for the District of Connecticut (Blumenfeld, J.), rendered April 17, 1974, holding him liable for damages to the United States for allegedly failing to collect, account for, and pay over to the IRS the withholding and social security taxes found to be due from and assessed against Hugo's Continental Restaurant, Inc. for the third and fourth quarters of 1967.

The IRS assessed Werner for a 100% civil penalty in lieu of such taxes "withheld" from the employees of the restaurant for not only the third and fourth quarters of 1967 but the two succeeding tax quarters of 1968, basing the assessments upon provisions of 26 U.S.C. Sec. 6672. Contending he was not a person subject to such 100% penalty liability, Werner paid \$100. of the total assessment of \$11,975.50, duly claimed a refund and sued in the U.S. District Court to recover it. The United States counterclaimed for the balance of the assessment and filed third party complaints against three other persons who allegedly were jointly and severally liable for the tax arrears or portions thereof, thereby being subject to the penalty assessment.

The Court dismissed the counterclaim against Werner with respect to the first and second tax quarters of 1968; entered a default judgment against Hugo Bua, aka Ugo Bua, president and principal stockholder of Hugo's Continental Restaurant, Inc., for the full amount of the unpaid taxes; and dismissed the counterclaims against Frank Alesi and Robert Smith, with damages in favor of Alesi, upon a finding that they were not responsible officers. None of these actions of the Court have been appealed.



### Questions Presented

1. Whether the findings of the Court support its judgment that the plaintiff is liable for the taxes for the third quarter of 1967 when the same findings indicate that he was unaware of the unpaid tax liability of the restaurant corporation until after an audit made in November, 1967.

2. Whether the judgment should not be modified to give the plaintiff credit for \$1,300. which the Court found was paid to the IRS out of funds made available to the restaurant (taxpayer) corporation by the plaintiff.

3. Whether, upon the entire record, the court's findings that plaintiff was "responsible person" with authority to direct or control the payment of corporate funds and that he "wilfully" failed to comply with the tax withholding status can be sustained.

### STATEMENT OF THE FACTS

Plaintiff Werner, together with Messrs. Kerin and Kaplan, acting as joint adventurers, in March, 1967, provided financial backing for the purchase by one, Hugo Bua, of the capital stock of a corporation operating a restaurant in West Hartford, Conn. The name of the restaurant was changed to Hugo's Continental. Hugo was for all practical purposes the sole stockholder.

However, in return for the financial backing of Werner and his co-adventurers, informally known as KKW, Hugo gave KKW an option to acquire 51% of his stock in Hugo's Continental for a two year period after his acquisition of the stock. The restaurant had more than \$29,000 in outstanding liabilities when Bua acquired it. It continued to operate at a loss under his management.

Beginning in May, 1967, Plaintiff Werner began to involve himself actively in the affairs of Hugo's. As the summer progressed, he became more and more involved in the day to day management. The plaintiff's office was near Hugo's, and he would stop in almost every day after work to discuss the business with Bua and to advise Bua on its conduct. Plaintiff had his nominees, Messrs. Alesi and Smith, assume assistant managerial roles, together with Bua and himself, in the conduct of the business.



Plaintiff directed an audit to be conducted of Hugo's books in November, 1967, in order to determine precisely the financial condition of Hugo's as of October 31, 1967. The audit revealed that Hugo's was still deeply in debt. At a meeting to discuss the audit on or about November 20, 1967, plaintiff expressed exasperation at the continued drain imposed by Hugo's on the resources of KKW, which had been extending additional credit to Hugo's from time to time since its initial backing of Bua in his acquisition of Hugo's. At plaintiff's direction the management of Hugo's was then reorganized to decrease Bua's "responsibilities" and to increase Smith's. Bua's power to write checks on Hugo's corporate account was then limited.

The audit showed that Hugo's owed more than \$9,000 in withholding taxes through the first ten months of 1967. Plaintiff arranged for KKW to give Hugo's about \$11,500 on November 21, 1967 in return for an assignment of \$12,500 of the restaurant's receivables. At plaintiff's direction, Bua and Smith visited the local IRS office, where they were told they would be contacted later regarding back taxes owed by the restaurant. Ultimately, only \$1,300 of the November 21 proceeds of KKW's purchases of Hugo's receivables was paid to the IRS. At the plaintiff's direction, the balance was applied in satisfaction of other debts including unpaid state taxes and liquor bills. Plaintiff was particularly concerned lest unpaid liquor bills should lead to suspension of Hugo's liquor license.

A meeting of the principals of KKW was held at Hugo's on New Year's Eve, Dec. 31, 1967. This followed a disastrous holiday season. Bua was excluded from this meeting. Enraged at this treatment, Bua ejected the KKW principals from the restaurant premises. Bua then re-assumed active management of the restaurant. Plaintiff Werner never again entered the premises. On March 15, 1968 KKW gave up its option to acquire 51% of Bua's stock in return for other consideration.

[The foregoing Statement of Facts is taken entirely from the opinion of Judge Blumenfeld. No facts deemed to be relevant by the judge have intentionally been omitted,\* and none of these facts are disputed by the plaintiff for the purposes of this Appeal.]

\* except facts deemed immaterial to this appeal



LAW INVOLVED

SECTION 6672      Failure to collect and pay over tax, or  
                         attempt to evade or defeat tax

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. ...  
Aug. 16, 1954, c. 736,68A Stat.828.

### The Argument

26 U.S.C. Section 6672 provides that any person who is required (1) to collect, (2) truthfully account for and (3) pay over any tax imposed by this title who willfully fails to (1) collect such tax, or (2) truthfully account for and (3) pay over such tax ... shall ... be liable to a penalty equal to the total amount of the tax (1) evaded, or (2) not collected, or (3) not accounted for and paid over. (Emphasis supplied.)

Thus, it appears, prima-facie, that the statute imposes a three-part requirement for a finding of liability to the 100% penalty mentioned therein. One must have the duty to collect, within the business entity required to withhold taxes from employee's wages, plus the duty to make the periodic accountings required by law to the IRS, and the duty to pay over the tax monies. The plain words of the statute itself do not impose a liability upon a corporate officer, whether de-jure or de-facto, who has only one, or even two, of those duties. He, apparently, must have all three duties.

The cases hitherto decided with respect to Section 6672, are conveniently gathered together in an ALR annotation to *Hewitt v United States*, 377 F2d 921, 22 ALR 3d 1, published in 1968. In the second paragraph of the *Hewitt* decision, the Court is at pains to point out that the plaintiff, at the times deemed relevant to the assessment of the penalty, had the authority to decide which creditors would and which creditors would not be paid.



It does not appear from an examination of this ALR annotation that this three-part test had ever, in reported cases, been applied to the determination of liability for the 100% penalty prior to 1968. Rather, the cases all appear to hinge upon the degree of control assumed by the party sought to be charged with the penalty and/or wilfulness of the non-payment of the tax. Illustrative cases are listed in Footnote 1 at the end of this brief.

Plaintiff Werner was involved with the taxpayer corporation, Hugo's Continental Restaurant, for a nine month period, from March to December, 1967, and had status only as a creditor in 1968. His involvement began in March, 1967, with a loan by KKW, an investment group in which he was a joint adventurer. By means of this loan, one Hugo Bua purchased the stock of an existing restaurant with debts of \$29,000. How much of this was unpaid withholding tax liability did not concern the trial court.

Bua never succeeded in extricating himself from this pre-existing debt. Werner, an attorney, exerted a growing influence in the management notwithstanding that he held no office in the restaurant corporation. He and his two associates ate there frequently. Werner's identification with Bua's management ultimately resulted in the assessment of the 100% penalty against him for the third and fourth quarters -- July to December, 1967.

What were these acts that gave rise to such liability on Werner's part? The court's memorandum of decision reads only as follows:

"Beginning in May, 1967, plaintiff began to involve himself actively in the affairs of Hugo's. Third party defendants Alesi and Smith were brought into the business at plaintiff's instigation. As the summer progressed plaintiff became more and more involved in the day to day management of Hugo's. Plaintiff's office was near Hugo's, and he would stop in at Hugo's almost every day after work to discuss the business with Bua and advise Bua on its conduct. Plaintiff had Alesi and Smith assume assistant managerial roles together with Bua and himself in the conduct of the business. Plaintiff directed an audit to be conducted of Hugo's books in November, 1967, in order to determine precisely the financial condition of Hugo's as of October 31, 1967. The audit revealed that Hugo's was still deeply in debt, and at a meeting to discuss the audit on about November 20, 1967, plaintiff expressed exasperation at the continued drain imposed by Hugo's on the resources of KKW, which apparently had been extending additional credit to Hugo's from time to time since its initial backing of Bua in his acquisition of Hugo's. At plaintiff's direction, in the course of this meeting to discuss the audit, the management of Hugo's was reorganized to increase Smith's responsibilities and to decrease Bua's, including Bua's power to write checks on Hugo's account.

The audit (in Nov., 1967) showed that Hugo's owed over \$9,000 in withholding taxes for the first ten months in 1967. Bua, an alien, was concerned lest he be deported for failure to pay these taxes. Plaintiff, ostensibly out of concern for Bua and his family, arranged for KKW on November 21, 1967 to give Hugo's about \$11,500 in return for an assignment of Hugo's



accounts receivable, which then totalled about \$12,500. At plaintiff's direction Bua and Smith visited the local Internal Revenue Service office, where they were told that they would be contacted later regarding Hugo's back taxes. Ultimately, only \$1,300 of the November 21 proceeds of KKW's purchase of Hugo's accounts receivable was paid to the IRS. The balance was at plaintiff's direction applied in satisfaction of other debts, including back state taxes and liquor bills. Plaintiff was particularly concerned lest unpaid liquor bills should lead to suspension of Hugo's liquor license."

All of these activities on the part of Werner hardly spell out any liability for the July, August, September, 1967 tax quarter. It is submitted that this is a true notwithstanding the rationalization of the Court as follows:

"...Plaintiff was clearly the man in ultimate control of Hugo's during this period (3rd and 4th quarter, 1967); as the only member of KKW actively monitoring Hugo's affairs, plaintiff had great influence over the putative owner of Hugo's, influence which plaintiff was not loath to exercise. Plaintiff's lack of any official connection (other than creditor) to Hugo's was largely illusory. KKW was possessed of an option to buy a majority interest in Hugo's at anytime during this period, for a mere \$1,000. Bua could have been under no misapprehension that resistance on his part to plaintiff's "advice" could easily result in his loss of formal control over Hugo's -- having sunken nearly \$30,000 in Hugo's, KKW could be expected readily to exercise its \$1,000 option in order to protect its investment by assuming direct management of the business, so long as the business was worth saving ..."

To hold Werner liable for the third quarter, as is submitted, the trial court would have had to find that he then had a duty to collect the withholding taxes from the restaurant employees. But this duty was Bua's. There is no showing that Bua ever asked Werner's "advice" about this -- or that Werner ever offered any advice on this subject. Werner had no managerial duties. His control over employees, if he had any, was through Bua. Likewise, there is no finding or any evidence to show that Werner controlled the accounting functions of the restaurant corporation. In fact, the Court expressly found that Werner caused an audit to be made in November, 1967 to ascertain the liabilities of the restaurant? This implies that he had no other access to the financial records. How, then, could he "truthfully account" for the withholding taxes?

The withholding taxes due for the July to September quarter of 1967 were due and payable by the time the audit results were available late in November. The decision shows that Werner expressed indignation and concern that the taxes were unpaid. There is no finding or evidence to show that he knew or even consciously thought about the tax situation of the restaurant prior to the audit. Logically, his concern would be that of a creditor.

The trial court concluded that KKW's option to acquire 51% of the restaurant corporation's stock amounted to control and that this control was exercised by Werner. However, this proposition requires further analysis.



" -- having already sunken nearly \$30,000 into Hugo's, KKW could be expected readily to exercise its \$1,000 option in order to protect its investment by assuming direct management of the business...", the trial court observed (in a previously quoted portion of the memorandum of decision). Emphasis added.

KKW was an investment group. Werner was a practising attorney. Neither he nor his joint adventurers indicated any intention to take part in the restaurant management, except as the necessity to protect the \$30,000 investment became obvious. The only overt steps they took prior to the audit was to watch the progress of the business by eating there frequently and to obtain the employment of Messrs Alesi and Smith in "assistant managerial roles." This latter characterization of the roles of Alesi and Smith are made in the 4th paragraph of the decision, and the Court later found that they "lacked sufficient authority within the management of Hugo's to be persons responsible for the payment of federal withholding taxes." This latter finding appears in the last paragraph of the decision.

Had Werner desired to exercise control, his minions (Alesi and Smith) were there. He could have given them more power. His influence during the summer of 1967, it is submitted, was more presumed than real.

The trial court must have been concerned with the handling of the \$11,500 which was made available to Hugo's by the plaintiff or or about November 21, 1967. We may assume, arguendo, that this sum would have covered about two quarters of withholding taxes if it had all been paid to the IRS. The Court found, as a fact, that Werner directed its disbursement and that all but \$1,300 went

to other creditors rather than to the IRS.

Parenthetically, the Court also found that "...at plaintiff's direction, Bua and Smith visited the local Internal Revenue Service office, where they were told that they would be contacted later regarding Hume's back taxes." (Emphasis supplied.) The above quotation is taken from the sixth paragraph of the court's memorandum of decision.

It does not appear from the trial court's decision that the \$1,300 paid over to the IRS as a result of Werner's intervention was credited to either of the quarters for which he was held liable. For all that anyone can tell at this juncture this sum may have been applied to the corporation's liability for some prior quarter. The decision is silent as to this point. Early in the trial, the plaintiff was effectively precluded from making inquiry. See footnote 2, at the end of this memorandum.

On equitable principles, it would appear that the Court ought to make certain that the plaintiff gets credit for this \$1,300 which he indisputably caused to be paid to the IRS.

To the larger issue, however: Could it have been the intent of Congress that a creditor who makes funds available to a failing business on condition that these funds be used to keep the business operating -- thereby keeping the ultimate word as to the disposition of these funds -- should thereby become subject to a personal liability to pay its taxes?

What would be the result of such a proposition? No creditor in his right mind would ever advance money to a debtor in failing circumstances unless its withholding taxes had been paid. Result: No, not more effective collection of taxes. Probably more liquidation



bankruptcies.

And if the creditor providing this life-or-death money exerts the power he undoubtedly has in this situation, the power to channel this money where he feels it will do the most good in the effort to keep the business going, we have an even more difficult problem of statutory interpretation. The problem, in some measure, arises from the 1958 9th Circuit decision quoted by Judge Blumenfeld in his opinion (Paragraph 8) to the effect that the person responsible for the payment of taxes under Sections 6671 and 6672 is the person who "had the final word as to what bills should or should not be paid, and when," Wilson v United States, 250 F. 2d 312, 316.

Cases holding a creditor liable under Section 6672 are rare or non-existent. Judge Blumenfeld cited none. It is to be presumed that he felt that Werner's relationship as a creditor coupled with the power to exercise the option gave him inexhaustible leverage to wield corporate power. In reality, however, his power to make more money available was the greatest power that he possessed. The real power derived from the debtor's - Bua's - desperate need for funds.

"So far as the United States is concerned, it is quite plain from the terms of the statute that the Congress intended that funds collected for these (withholding) taxes be treated as a trust fund and that persons responsible for their paying over should be individually liable as well as the corporation for their diversion." Spivak v United States, 370 F 2d, 612, 615 (2d Cir. 1967).

The trust fund rationalization for the 100% penalty is consistent with the three-tier test of liability to be found in the words of the statute itself.

A person who is responsible for collecting for the withholding tax, accounting for it and paying it over is and logically ought to be impressed with a trust for the benefit of the United States. The proposition brooks no argument. Moreover, when these taxes have, in fact, been collected, the person who has the power of disposition is logically subject to the duty to make a full accounting for these funds - a duty to the IRS and to anyone else in the management of the business, a duty that would arise by operation of law if there were no Section 6672.

The problem arises when A has a duty to pay the tax and B has the duty to collect it from the affected employees but neglects this duty. There is then no trust fund to draw upon, and A will be in a difficult situation if the rule expressed in *Wilson v United States*, supra, is applied to him. Yes, he has the final word as to what bills should be paid and when; he is indeed monarch of all he surveys within the taxpaying entity, but the sword of Damocles hangs poised over his head.

If A is a person "so connected with a business as to be in a position to exercise full authority with respect to its financial affairs," -- the Melillo rule -- he is likewise on thin ice when B has fallen down upon his duty. See *Melillo v United States*, 244 F. Supp. 323, 326-7 (E.D. N. Y. 1965). Again, a person undertaking to help any failing business by providing management assistance, whether as a lender or high level employee (even one newly-hired), then subjects himself to liability for past due withholding taxes if he presumes to pay the rent or phone bill or any charge whatever no matter how necessary for the survival of the business. Congress could not have intended such a counter-productive result from Section 6672.



The primary tenet of statutory construction is to read the statute. See Footnote 3. By making Section 6672 applicable to "any person required to collect, account for and pay over any tax imposed by this title," Congress expressed its intent that the penalty be assessed only against a corporate officer or one in the management of a business who exercised all three of the enumerated functions. (Emphasis supplied.)

Hugo Bua clearly was responsible for all three of these functions in his business venture. Werner, just as clearly, had one fleeting moment of absolute power. This was when he disbursed funds which he had lent to the restaurant corporation, funds which were provided on the expressed or implied condition that they be used to keep the restaurant going. This Court can certainly take judicial notice that the period preceding Christmas and New Year's Eve is a "make or break" period in the restaurant business. KKW had an interest, certainly not adverse to the IRS, in keeping the place open. It had no interest in gratuitously making the funds available to pay back withholding taxes and certainly no duty to do so.

Werner's primary duty at all times was to KKW, not to Hugo's Continental Restaurant, Inc. He had no trust funds under his control. He never had, or discharged any duty to collect withholding taxes, make any accounting for such funds or, it is submitted, to disburse funds for its taxes. His power was empheral and it was absolute only in the sense that it was momentarily superior to Bua's -- but his authority to direct or control the payment of corporate funds was limited not only in time but in the very purpose for which the funds had been provided.

It is submitted that:

1. The evidence against Werner with respect to the first quarter, 1967 withholding taxes is wholly insufficient to support a finding that he is or was liable for the 100% penalty in respect thereto.

2. In any event, he should receive credit for \$1,300 paid on the 4th quarter taxes at his instance.

3. This Court should apply the three-part test of liability for the 100% penalty embodied in 26 U. S. C., Section 6672, and by this standard should find that Werner was not required to collect, account for and pay withholding taxes of Hugo's Continental Restaurant, Inc. and is therefore not liable for a penalty for failure to do so.

#### CONCLUSION

The judgment of the District Court assessing the 100% penalty against Werner should be reversed or, in the alternative, modified to give him credit for the \$1,300 tax payment and to free him from the alleged liability for the third quarter (summer) 1967 uncollected and unpaid withholding taxes.

Respectfully submitted. ✓

By: Attorneys for the Plaintiff:

Louis Noah Forman  
1540 Broadway,  
New York City, 10036

Phone (212) 582-3785

Joseph Neiman  
103 Market Square,  
Newington, Conn., 06111  
Phone (203) 666-1573



Footnote 1: Cases dealing with the Section 6672 penalty ordinarily deal with the liability of corporate officers or with the liability of owners or employees of an unincorporated business. Most deal with degree of control or wilfulness. Cases with facts analagous to the case at Bar are cited as follows:

1. Wade v United States (1954), F DC W Va, 54-2 USTC, Sec. 49,066. Plaintiff was president of taxpayer corporation but had been given one share of stock to qualify as such and had been made the president at the instance of a creditor to supervise the affairs of the company for the protection of creditors, and further showed that the treasurer of the company was under the duty to prepare and did prepare the corporation's withholding tax returns. Held: No liability for penalty. See 22 ALR 3d at Page 75.

2. Hill v United States (1964) F DC Texas, 64-2 US TC Sec. 9806. Hill paid part of the penalty and sued for a refund. The US counterclaimed against a bank which provided interim financing for taxpayer, the bank vicepresident, an insurer bonding company and its claims examiner. Subsequently, the Court found in favor of these defendants upon the counterclaim by sustaining their motions for judgment notwithstanding a verdict against them for liability for part of the assessments. Ibid. Sec. 9666. 22 ALR 3d at Page 75.

3. Slattery v US (1963) F DC Pa. 224 F Supp 214, affd CA3, 333 F 2d 844. Slattery left his law practice to attempt to bolster a failing company founded by his uncle so that it could be sold as a going business. He was president, one of five directors, co-trustee of a voting trust that controlled the company, a substantial shareholder and a creditor. He relied on the treasurer to file quarterly reports for tax purposes and did not inquire into or change the pay-

roll department and the treasurer and the company's creditors made the decisions as to what creditors should be paid. Held: No 6672 liability on a finding that Slattery had no duty to collect and pay over the taxes and that his failure to do so was in any event not willful. 22 ALR 3d at Page 74.

Wiggins v United States (1960) DC Tenn. 188 F Supp 374. This case was cited as a precedent for Slattery. Wiggins was president and treasurer of a mining company, signed its checks but delegated to a bookkeeper the duties of keeping up with and paying the bills and taxes while he worked in the field. He knew the tax claims were payable in a general sense but never had it brought home to him that the company should be paying the taxes. The Court found it "quite doubtful" that Wiggins was a person charged with the duty to collect and pay over the tax but that, in any event, his failure to see that the tax was paid was not "wilful." See 22 ALR 3d at Page 73. This case is reminiscent of those cases where a jury fails to convict in a capital case because of the harshness or inequity of the penalty.



Footnote 2: At the trial, the plaintiff first called Mr. Francis J. Lepore, who identified himself as a Group Manager for the Internal Revenue Service, as a witness. (Transcript, Page 5). The witness testified that a revenue agent named Sargis first recommended the 100% penalty against the plaintiff and others. (Page 8) The Sargis file was not produced in Court. The following colloquy occurred:

The Court: You don't have Sargis' file here, right?

The Witness: No.

The Court: Is it in the building?

The Witness: No, sir, I would think that file is destroyed now; the file on the corporation itself, for that file.

The Court: Why would it be destroyed now?

The Witness: Well, it's over three years.

The Court: It is still an active file.

The Witness: Well, the 100% penalty file is its active file, sir.

The Court: All right.

The transcript (Pages 9 etc) then shows that plaintiff Werner attempted to inquire as to what tax was contained in the 100% penalty assessed against him. There was objection. (Page 10) The Court inquired as to whether the amount of the tax were in dispute and made the observation, "I don't see anything alleging that the tax is improperly computed." The plaintiff remarked: "Well, your honor, my complaint states that I am not liable for any tax in this matter." The Court then sustained the objection and did not thereafter permit the plaintiff to inquire as to the manner of computation of the tax or whether any credits had been allowed thereto.

Footnote 3: See *Linsley v Brown*, 13 Conn. 192, 194 (1839) for the proposition that "It is the fittest course for courts to adhere to the words of a statute, construing them according to their nature and import, in the order in which they stand in the act. The plain and obvious meaning is not to be departed from, for the purpose of instituting an inquiry into the supposed intention of the framers of the law. Such intention is to be collected from the words of the act, rather than presumed from that which does not appear in it. The law is to be interpreted according to the intention of the legislature apparent upon its face." (Citations omitted. Emphasis is contained in the decision.) See also *Cadwell v The State*, 17 Conn. 467, 471 (1846): "...it, moreover, is a well-established rule, that statutes are to be so construed, that every word in them is, if possible, to take effect, that being according to the presumed intent of the legislature.

Acts imposing forfeitures to the government are to be construed strictly as against the government and liberally as to the other parties. *Shipp v Miller*, 2 Wheat 316, 4 L Ed 248. Statutes to prevent frauds on the revenue are to be fairly construed, so as to carry out the intention of the legislature. *United States v Stowell*, 133 US 1, 10 S Ct 244, 33 L Ed 555.



LAW OFFICES  
JOSEPH NEIMAN, P.C.

JOSEPH NEIMAN  
MARTIN S. STILLMAN

103 MARKET SQUARE  
P. O. BOX 11-413  
NEWINGTON, CONN. 06111  
(203) 666-1573

December 4, 1974

Clerk  
United States Court of Appeals  
For The Second Circuit  
Foley Square  
New York, N. Y., 10007

Attention: Mr. Crivelli

Dear Sir:

Re: 74-2166  
Howard M. Werner  
vs.  
Unites States of America

As directed by you, I am enclosing, herewith  
thirty-five (35) copies of the Brief in re the above  
captioned matter.

Very truly yours,

Enclosures  
JN:mck

*Joseph Neiman*  
Joseph Neiman

CC - Jeffrey Blum, Esq., c/o Scott P. Crampton, assistant  
attorney general, and Gilbert Andrews, Chief, Appellate  
Section, Dept. of Justice., Washington, D.C., 20530.

Louis N. Forman, 1540 Broadway, New York, N. Y., 10036

*Called 12-10-74  
left message to file motion for ext  
of time to file B+A*